

**DECISION**



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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-203184

DATE: October 28, 1981

MATTER OF: AAA Desk Painters, Inc.

**DIGEST:**

Adequate notice of the responsibilities and liabilities of a potential contractor under the Service Contract Act and the Contract Work Hours Safety Standards Act is provided by a solicitation which incorporates by reference forms explaining both acts and directly contains specific notice of Service Contract Act.

AAA Desk Painters, Inc. protests that invitation for bids No. GSD-9DPR-10005-A, issued by the General Services Administration's regional office in San Francisco, California, for furniture painting services, failed to warn bidders of their potential obligations under the Service Contract Act of 1965, as amended, 41 U.S.C. §§ 351-356 (1976) and their obligations and potential liability for liquidated damages under the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 327-333 (1976).

We believe that the solicitation adequately informs bidders of their obligations under these two acts. Page eight of the IFB specifically advised bidders that the Service Contract Act was applicable to this procurement and advised bidders to direct any question regarding obligations under that Act to the Department of Labor. In fact, pages eight through eleven of the solicitation were exclusively devoted to wage determinations under the Service Contract Act. Further, page six of the IFB indicated to bidders that GSA Form 2166, Service Contract Act of 1965 (as amended), September 1978 Edition was incorporated into the IFB by reference and indicated where the form could be obtained. The form, in addition to setting forth the provisions of the Act, stated that covered contracts were subject to Labor Department regulations.

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Similarly, page six of the IFB also indicated that Standard Form 32, General Provisions (Supply Contract), April 1975 Edition was incorporated by reference and could be obtained by request. That form set forth at paragraph 16 entitled, Contract Work Hours and Safety Standards Act - Overtime Compensation included the requirements of that Act, along with a statement that penalties and liquidated damages would be assessed in the event of a violation. This paragraph also warned bidders that covered contracts were subject "to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder."

We believe these notices are sufficient to apprise potential bidders of the applicability of both acts and their implementing regulations and the effect that the acts might have upon the contractor's performance, including potential liability for liquidated damages. Material provisions of this type incorporated by reference into a solicitation are legally binding and bidders are charged with constructive knowledge of their contents. Rally Racks, Division of Rally Enterprises, Inc., -- Reconsideration, B-200159.2, October 30, 1980, 80-2 CPD 330. Further, a prudent bidder that is not familiar with the contents of these documents can easily obtain copies and thoroughly acquaint itself with the requirements of these acts prior to submitting its bid, and we see no reason to suggest, as does the protester, that agencies should place a prominent notice of a contractor's potential liabilities under the two acts on the face of all solicitations. In any event, it is clear from the protester's submissions that it is indeed familiar with the provisions of the two acts and their implementing regulations.

The protester also complains about the contracting officer assigned to this procurement, apparently because the protester does not agree with her actions in connection with the protester's current contracts with the agency. The selection of a particular contracting officer is an internal agency matter which is not reviewable under our Bid Protest Procedures. While we would consider allegations that a contracting officer acted in bad faith or was biased in favor or against a particular competitor, no such allegation is made here.

The protest is denied.

for *Milton J. Socolar*  
Comptroller General  
of the United States